IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 673 OF 1996.

Dena Bank.
a body corporate constituted
under the provisions of Banking
Companies (Acquisition and Transfer
of Undertakings Act) 1970 and having
its head office at Maker Tower "E"
Cuffe Parade, Bombay 400 005 and
a branch inter alia at Kharek
Bazar, Bombay 400 009. ... Plaintiffs.

Versus.

M/s.ICI Limited,
a company incorporated under the
Companies Act, 1956 and having
its office at Fosbery Road, Sewri,
Bombay 400 033. ... Defendants.

Shri Rajgor Pritesh i/by PDS Legal for the Plaintiffs.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 2nd November, 2007.

ORAL JUDGMENT.:

1. The suit is filed by the Plaintiffs for recovery of a sum of Rs.3,70,089.90 ps. with further interest on the sum of Rs.2,47,705.00 at the rate of 18% per annum from the date of filing of the suit till realisation or payment. Unconditional leave was granted in favour of the Defendants to defend the suit. However, no written statement has been filed by the Defendants.

2. The suit filed by the Plaintiffs is based on the bills exchange drawn by M/s.Shah Chhaganlal Laxmichand

for a total sum of Rs.2,47,705/-, particulars of which are set out in paragraph 3 of the plaint. The said bills were duly accepted by the Defendants for payment to the Plaintiffs on due dates. As the bills of exchange were discounted by the Plaintiffs for valuable consideration, the Plaintiffs became holders in due course of the said bills of exchange. Though the Plaintiffs called upon the Defendants to pay the amounts under the bills of exchange there was no compliance from the Defendants. It is stated that even the drawers of the bills of exchange failed to make payment of the amount due under the bills of exchange to the Plaintiffs. Reliance has been placed on the demand notice dated 14th October 2005 calling upon the Defendants to pay the amount.

3. The Plaintiffs have produced original documents with a list. The list is marked "X" for identification. The Plaintiffs have also filed an affidavit of Shri N.Rama Rao, Assistant General Manager of the Plaintiffs. In the said affidavit it is stated that the original letter dated 2nd November 1992 addressed by Shah Chhaganlal Laxmichand to the Plaintiffs has been lost or misplaced and therefore, a true copy of the said letter has been produced along with the said affidavit. It is stated that the true copy is a typed copy of the original and the original could not be traced out

inspite of best efforts.

4. The original bills of exchange have been placed on record. The said original bills of exchange show that the same were accepted for payment by the Defendants. The true copies of the invoices in connection with which the bills of exchange were drawn are also produced on record.

5. The averments made in the plaint have not been controverted by the Defendants. The claim of the Plaintiffs has been proved by production of the original documents and a true copy of the letter dated 2nd November 1993. Therefore, this is a fit case for passing a decree under rule 10 of Order VIII of the Code of Civil Procedure, 1908. The Plaintiffs have claimed further interest at the rate of 18% per annum. Considering the nature of claim of the Plaintiffs, the interest at the said rate deserved to be granted.

6. Accordingly the suit is decreed in terms of prayer clause (a). The Plaintiffs will be entitled to the refund of Court fees, if any, as per the Rules. Certified copy is expedited.

Judge.